Randhir Singh a/l Bhajnik Singh v Sunildave Singh Parmar (the administrator of the estate of K Surjit Kaur a/p Gean Kartar Singh, deceased)

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-02(NCVC)(W)-2587–12 OF 2017
TENGKU MAIMUN, HAMID SULTAN AND HANIPAH FARIKULLAH JJCA
25 SEPTEMBER 2018

Debt and Recovery — Recovery of payment — Personal loan — Statutory declaration of indebtedness — High Court entered judgment for plaintiff principally on defendant's statutory declaration of indebtedness of a debt — Whether as per statutory declaration, plaintiff entitled to judgment — Whether usage of statutory declaration as document to recover loan contrary to Stamp Act 1949 — Whether statutory declaration to seek payment of loan in breach of general purpose of statutory declaration — Whether defendant's defence sustainable in law

Evidence — Admissions — Of debt — Statutory declaration of indebtedness — High Court entered judgment for plaintiff principally on defendant's statutory declaration of indebtedness of a debt — Whether s 17 of the Evidence Act 1950 was conclusive proof provision — Evidence Act 1950 ss 17, 31 & 102

Randhir Singh a/l Bhajnik Singh ('the defendant') had received a personal loan amounting to RM672,225 from K Surjit Kaur a/p Gean Kartar Singh ('the deceased') who allegedly conducted a money lending business without valid license. The defendant contended that he had settled the full capital payment to the deceased and had paid half of the interest charged by the deceased on the said loan. However, there were accrued interest, as such, the defendant had affirmed a statutory declaration dated 5 January 2017 ('the statutory declaration'). The defendant contended that the statutory declaration was affirmed by the defendant upon pressure and coercion by the deceased. In the High Court, the plaintiff being the administrator of the deceased's estate sued the defendant for the outstanding amount of the loan. The High Court had entered judgment for the plaintiff principally on the said statutory declaration and on the basis of principles of admission under s 17 of the Evidence Act 1950 ('the Act') only. Aggrieved by the decision, the defendant filed the present appeal.

Held, allowing the appeal, setting aside the decision of the High Court with costs of RM10,000 for here and below subject to allocator:

(1) It was trite that legal burden was on the plaintiff and the evidential burden and/or opposing evidence to rebut the plaintiff's claim on the balance of probability lay on the defendant. When the plaintiff materially relied on s 17 of the Act, the court must take cognisance that s 17 was not a conclusive proof provision as stated in s 31 of the Act. In the present case, the deceased had died and consequently the defendant's version had not been rebutted in any material form. The plaintiff would be in no position to credibly provide sufficient evidence to neutralise the defendant's story. Thus, purely relying on s 17 of the Act may not meet the challenge related to conclusive evidence provision. In the present case, the learned judge had acted on the basis of principles of admission (under s 17 of the Act) only and had ignored other parts of the Act such as ss 31 and 102 of the Act. In addition, there was no mention of these sections in the judgment as well, thereby warranting appellate intervention to set aside the judgment in limine (see paras 4 & 8(a)–(c)).

(2) The terms for the return of money stated in the statutory declaration were quite unusual. Further, statutory declarations were not generally used as a document to recover a loan granted as it would impinge on the Stamp Act 1949. If ad valorem duty was not paid, the statutory declaration as admission of loan may not be worth the paper it was written on. In fact, in the present case, there was no evidence of payment of ad valorem. The statutory declaration to seek payment of a loan was in breach of general purpose for what statutory declaration was meant for. In addition, the court found that the defendant's defence was one sustainable in law. The failure of the learned judge to give proper weight to the defence version in actual fact compromised the integrity of the decision-making process (see paras 8(d) & 11).

[Bahasa Malaysia summary

Randhir Singh a/l Bhajnik Singh ('defendan') telah menerima pinjaman peribadi sejumlah RM672,225 daripada K Surjit Kaur a/p Gean Kartar Singh ('si mati') yang didakwa menjalankan perniagaan memberi pinjaman tanpa lesen yang sah. Defendan berhujah bahawa dia telah menyelesaikan bayaran modal penuh kepada si mati dan telah membayar sebahagian faedah yang dicaj oleh si mati atas pinjaman tersebut. Walau bagaimanapun, terdapat faedah yang terakru, dengan itu, defendan telah mengesahkan perisytiharan statutori bertarikh 5 Januari 2017 ('perisytiharan statutori'). Defendan berhujah bahawa perisytiharan statutori disahkan oleh defendan atas tekanan dan paksaan oleh si mati. Di Mahkamah Tinggi, plaintif sebagai pentadbir estet si mati menyaman defendan bagi jumlah pinjaman yang belum dibayar. Mahkamah Tinggi telah memasukkan penghakiman bagi plaintif terutamanya atas perisytiharan statutori dan atas asas prinsip pengakuan hanya di bawah s 17 Akta Keterangan 1950 ('Akta'). Tidak berpuas hati dengan keputusan tersebut, defendan memfailkan rayuan ini.

Diputuskan, membenarkan rayuan, mengetepikan keputusan Mahkamah Tinggi dengan kos sebanyak RM10,000 bagi mahkamah ini dan Mahkamah Tinggi tertakluk kepada alukator:

(1) Ia adalah nyata bahawa beban undang-undang adalah di atas plaintif dan beban memberi keterangan dan/atau keterangan menentang untuk mematahkan tuntuatn plaintif atas imbangan kebarangkalian terletak di atas defendan. Apabila plaintif secara material bergantung ke atas s 17 Akta, mahkamah mesti ambil tahu bahawa s 17 bukan peruntukan bukti konklusif seperti yang dinyatakan dalam s 31 Akta. Dalam kes ini, si mati telah meninggal dunia dan akibatnya versi defendan tidak dipatahkan dalam apa-apa bentuk material. Plaintif bukan dalam kedudukan untuk memberikan keterangan yang mencukupi untuk meneutralkan cerita defendan. Oleh itu, semata-mata bergantung ke atas s 17 Akta mungkin tidak dapat memenuhi cabaran berkaitan peruntukan keterangan konklusif. Dalam kes ini, hakim yang bijaksana telah bertindak hanya atas asas prinsip pengakuan (di bawah s 17 Akta) dan tidak memperdulikan bahagian-bahagian Akta yang lain seperti ss 31 dan 102 Akta. Selain itu, seksyen-seksyen ini juga tidak disebut dalam penghakiman dengan itu mewajarkan campur tangan mahkamah rayuan untuk mengetepikan penghakiman in limine (lihat perenggan 4 & 8(a)–(c)).

(2) Terma-terma bagi pemulangan wang yang dinyatakan dalam perisytiharan statutori adalah agak luar biasa. Selanjutnya, perisytiharan statutori tidak digunakan secara am sebagai dokumen untuk mendapatkan semula pinjaman yang diberikan kerana ia akan mempengaruhi Akta Setem 1949. Jika duti ad valorem tidak dibayar, perisytiharan statutori sebagai pengakuan pinjaman tidak akan bernilai kertas yang ditulis di atasnya. Sebenarnya, dalam kes ini, tidak terdapat keterangan bayaran ad valorem. Perisytiharan statutori untuk mendapatkan bayaran pinjaman adalah memungkiri tujuan am bagi apa perisytiharan statutori dimaksudkan. Selain itu, mahkamah mendapati bahawa pembelaan defendan adalah satu yang boleh dipertahankan dari segi undnag-undang. Kegagalan hakim yang bijaksana untuk memberi pertimbangan yang betul kepada versi pembelaan adalah sebenarnya kompromi integriti proses membuat keputusan (lihat perenggan 8(d) & 11).]

Notes

For a case on admissions of debt, see 7(1) *Mallal's Digest* (5th Ed, 2017 Reissue) para 290.

Cases referred to

Kenanga Investment Bank Bhd v Swee Joo Bhd & Ors and another appeal [2017] MLJU 2095; [2017] 1 LNS 2086, CA (refd)

A *Ong Koh Hou @ Won Kok Fong v Da Land Sdn Bhd & Ors* [2018] MLJU 778, CA (refd)
Pan Malaysian Pools Sdn Bhd v Kwan Tat Thai & Anor and other appeals [2018] 4 MLJ 461; [2018] 4 CLJ 323, CA (refd)
Reebok (M) Sdn Bhd v CIMB Bank Bhd [2018] MLJU 1116, CA (refd)
B *Selvaduray v Chinniah* [1939] 1 MLJ 253 (refd)
Wong Kian Wah v Ng Kien Boon [2018] MLJU 989; [2018] AMEJ 0827, CA (distd)

Legislation referred to

C Evidence Act 1950 ss 17, 31, 57, 102
Stamp Act 1949

Appeal from: Civil Suit No BA-22NCVC-124–03 of 2017 [MT2] (High Court, Shah Alam)
D

PM Nagarajan Periasamy (Vinoshni Narayanasamy with him) (Nagarajan Peri & Co) for the appellant.
K Thavanesan (D Ramesh with him) (K Thava) for the respondent.

E **Hamid Sultan JCA (delivering judgment of the court):**

[1] The appellant/defendant appeals against the decision of the High Court which entered judgment for the respondent/plaintiff (administrator of the deceased's estate of K Surjit Kaur a/p Gean Kartar Singh) principally on a
F statutory declaration of indebtedness of a debt for the sum of RM2m.

[2] In the instant case, the learned counsel for the respondent had relied on the case of *Wong Kian Wah v Ng Kien Boon* [2018] MLJU 989; [2018] AMEJ
G 0827, the coram consisting of Hamid Sultan bin Abu Backer JCA, Abdul Rahman bin Sebli JCA and Mary Lim Thiam Suan JCA. The facts of *Wong Kian Wah*'s case is different. In *Wong Kian Wah*'s case, the admission was in the agreed facts. There was no challenge to that admission. In the instant case, the statutory declaration and its purpose had been a point of contention in the
H entire trial.

[3] The said statutory declaration and its terms as well as the amount will on the face of record, to any reasonable tribunal will appear that there must be a great story behind the whole transaction. The appellant in rejecting the claim
I had explained in his evidence in a cogent manner.

[4] The learned trial judge had acted on the basis of principles of admission (under s 17 of the Evidence Act 1950 ('the EA 1950') only), ignoring other parts of the Act such as s 31 as well as s 102, etc. There was no mention of these

sections in the judgment as well, thereby warranting appellate intervention to set aside the judgment in limine.

[5] The said statutory declaration read as follows:

> I Randhir Singh a/l Bhajnik Singh NRIC No 710628-10-6545 address No 12, Jalan Camar 4/25, Villa Damansara, 47810, Kota Damansara, Petaling Jaya, Selangor Darul Ehsan would like to declare that I have been receiving friendly loans free from any interest whatsoever from K Surjit Kaur a/p Gean Kartar Singh NRIC No 591229-10-5426 address 302 Summervilla Condominium, Wangsa Baiduri, 11 Jalan SS12/1, 47500 Subang Jaya, Selangor Darul Ehsan.
>
> The total amount of loans received till to date is Ringgit Malaysia Two Million Only (RM2,000,000.00).
>
> I undertake to return the said amounts of money taken from K Surjit Kaur within 24 months from receiving any formal notice of demand from K Surjit Kaur or ten years (10 years) from this date whichever is earlier.

[6] The defendant's version to the plaintiff's claim has been well articulated by the learned counsel for the appellant and to save courts time, we repeat verbatim. It, inter alia, read as follows:

> Brief Facts
>
> (1) The Appellant/Defendant is a director and shareholder of the Company by the name of Tiger Force Sdn Bhd.
>
> (2) The Appellant/Defendant have received a personal loan amounting to RM672,225.00 from K Surjit Kaur A/P Gean Kartar Singh (the deceased), whom was the Appellant's/Defendant's friend whom was conducting a money lending business without a valid license wherein the deceased have charged interest amounting to 4% on the said loan.
>
> (3) The Appellant/Defendant have settled the full capital payment to the deceased and also have paid half of the said interest charged by the deceased on the said loan. However, there were accrued interest of the said loan and as such the Appellant/Defendant have affirmed a Statutory Declaration dated 05/01/2017.
>
> (4) The Appellant/Defendant have affirmed the said Statutory Declaration upon the pressure and coercion by the deceased, whereby the deceased have threatened the Appellant/Defendant that if the Appellant/Defendant refuse to pay the accrued interest by affirming the statutory declaration, the deceased would tarnish the Appellant's/Defendant's name for the money lending in their Sikh religion Community.
>
> (5) The said Statutory Declaration was affirmed for the accrued interest which from the said personal loan given by the deceased to the Appellant/Defendant whereby the deceased have informed the Appellant/Defendant that he should pay the said accrued interest in 10

A years' time with a fixed amount of RM2,000,000.00 as stated in the said Statutory Declaration dated 05/01/2011.

(6) Upon affirming the Statutory Declaration, the Appellant/Defendant did not make any payment to the deceased.

B (7) Besides the personal loan given to the Appellant/Defendant, the deceased have also given loan amounting to RM1,604,925.00 to the Appellant's/Defendant's previous company Dominasi Cendana Sdn Bhd and have also charged an interest amounting to 4% on the said loan.

(8) The said borrowing was paid by Dominasi Cendana Sdn Bhd vide cash to
C the deceased as requested by the deceased. Besides that the deceased have also conducted money lending business by lending the Appellant's/Defendant's current company, Tigerforce Sdn Bhd, whereby the Appellant/Defendant do not have any control over the money flow.

(9) However, on 28/02/2017, the Respondent/Plaintiff as the administer of
D the deceased's estate have initiated a legal proceeding against the Appellant by claiming for the said RM2,000,000.00 as per the Statutory Declaration and as alternative have claimed the amount of RM1,654,925.00 from the Appellant/Defendant which clearly the Appellant/Defendant have denied to the claim.

E (10) The Respondent/Plaintiff have in his submitted banking slips which were issued to Dominasi Cendana Sdn Bhd and Tigerforce Sdn Bhd and have claimed the sum of RM1,654,925.00 from the Appellant/Defendant who is merely the shareholder and director of the companies. The Appellant/Defendant have denied all through his defence dated
F 25/05/2017.

[7] The appellant in the memorandum of appeal had taken into issue the facts and breach of law, etc. We do not think it is necessary to go into those issues inclusive of issues related to limitation. It will be sufficient on the facts of
G this case to consider whether as per the statutory declaration, the plaintiff is entitled to judgment on the face of defendant's evidence taking into consideration the fact that a sum of RM1,609,925 was paid to the appellant's previous company. The said memorandum of appeal read as follows:

H 1. Yang Arif yang bijaksana telah terkhilaf dari segi undang-undang dan fakta apabila menghiraukan fakta kes Perayu/Defendan bahawa K Surjit Kaur A/P Gean Kartar (Simati) menjalankan satu urusniaga pinjaman wang berfaedah tanpa berlesen yang bertentangan dengan Akta Pinjaman Wang 1951 (Money Lenders Act 1951);

I 2. Yang Arif yang bijaksana telah terkhilaf dari segi undang-undang dan fakta apabila tidak mengambil kira bukti iaitu rakaman video yang bertarikh 18/01/2011 yang diberikan oleh Perayu/Defendan yang dengan jelasnya menunjukkan bahawa K Surjit Kaur A/P Gean Kartar (Simati) menjalankan satu urusniaga pinjaman wang berfaedah tanpa lesen yang sah;

3. Yang Arif yang bijaksana telah terkhilaf dari segi undang-undang dan fakta apabila gagal melihat transaksi pinjaman yang diberikan oleh Simati K Surjit Kaur A/P Gean Kartar kepada Perayu/Defendan merupakan satu transaksi yang menyalahi undang-undang; A

4. Yang Arif yang bijaksana telah terkhilaf dari segi undang-undang dan fakta apabila menghiraukan fakta kes Perayu/Defendan yang menyatakan bahawa Perayu/Defendan mempertikaikan kandungan Surat Akuan yang telah diikrarkan oleh Perayu/Defendan pada 05/01/2011; B

5. Yang Arif yang bijaksana telah terkhilaf dari segi undang-undang dan fakta apabila menghiraukan fakta kes Perayu/Defendan yang menyatakan bahawa pinjaman peribadi diberikan oleh Simati K Surjit Kaur A/P Gean Kartar kepada Perayu/Defendan adalah jumlah wang RM672,225.00 yang telah dibayar balik oleh Perayu/Defendan kepada Simati dan bukanlah wang jumlah Ringgit Malaysia Dua Juta (RM2,000,000.00); C

6. Yang Arif yang bijaksana telah terkhilaf dari segi undang-undang dan fakta apabila menghiraukan fakta dimana Perayu/Defendan menyatakan bahawa wang jumlah Ringgit Malaysia Dua Juta (RM2,000,000.00) tersebut adalah jumlah faedah terakru yang dikenakan oleh Simati K Surjit Kaur A/P Gean Kartar kepada Perayu/Defendan dan bukanlah satu pinjaman wang diberikan oleh Simati kepada Perayu/Defendan seperti dinyatakan oleh Responden/Plaintif; D E

7. Yang Arif yang bijaksana telah terkhilaf dari segi undang-undang dan fakta apabila menghiraukan isu yang dibangkitkan oleh Perayu/Defendan bahawa tuntutan Responden/Plaintif adalah 'time barred' mengikut Seksyen 6(1) Akta Had Masa 1953; F

8. Yang Arif yang bijaksana telah terkhilaf dari segi undang-undang dan fakta apabila menghiraukan fakta dimana Perayu/Defendan menyatakan bahawa tuntutan Responden/Plaintif tidak berasas dan bercanggah atas sebab terdapat tiga senario tuntutan berlainan dituntut oleh Responden/Plaintif terhadap Perayu/Defendan yang dimana menunjukkan bahawa Responden/Plaintif sendiri tidak pasti akan tuntutannya terhadap Perayu/Defendan. Perkara ini telah diakui oleh Responden/Plaintif sendiri semasa perbicaraan dan Yang Arif yang bijaksana telah terkhilaf dengan tidak mengambil perhatian terhadap isu ini; G H

9. Yang Arif yang bijaksana telah terkhilaf dari segi undang-undang dan fakta apabila menghiraukan fakta dimana Perayu/Defendan menyatakan bahawa Responden/Plaintif adalah seorang saksi yang tidak bermaterial dan tidak pasti akan tuntutannya terhadap Perayu/Defendan yang merupakan satu penyalahgunaan proses Mahkamah; I

10. Yang Arif yang bijaksana telah terkhilaf dari segi undang-undang dan fakta apabila menghiraukan fakta dimana segala transaksi pinjaman berdasarkan slip-slip deposit dinyatakan oleh Responden/Plaintif dalam tuntutannya adalah pinjaman wang diberikan oleh Simati pada tahun

2010 iaitu sebelum Akuan Berkanun bertarikh 05/01/2011 diikrarkan oleh Perayu/Defendan yang dengan jelasnya merupakan satu 'past consideration'.

11. Yang Arif yang bijaksana telah terkhilaf dari segi undang-undang dan fakta apabila menghiraukan fakta Perayu/Defendan yang menyatakan bahawa tuntutan Responden/Plaintif adalah tidak berasas atas sebab Responden/Plaintif menuntut Ringgit Malaysia Dua Juta (RM2,000,000.00) dan secara alternatif Ringgit Malaysia Satu Juta Enam Ratus Lima Puluh Empat Ribu Sembilan Ratus Dua Puluh Lima (RM1,654,925.00) di mana Responden/Plaintif sendiri tidak pasti akan tuntutannya yang sebenar. Yang Arif yang bijaksana dengan jelasnya telah terkhilaf dengan tidak mengambil perhatian terhadap tuntutan yang tidak berasas ini apabila gagal meletakkan jumlah tuntutan yang sebenar Responden/Plaintif di dalam mindanya.

[8] We have read the appeal records and the able submissions of the parties. After giving much consideration to the submission of the learned counsel for the respondent, we take the view that the appeal must be allowed. Our reasons, inter alia, are as follows:

(a) it is trite that legal burden is on the plaintiff and the evidential burden and/or opposing evidence to rebut the plaintiff's claim on the balance of probability lies on the defendant. In *Pan Malaysian Pools Sdn Bhd v Kwan Tat Thai & Anor and other appeals* [2018] 4 MLJ 461; [2018] 4 CLJ 323, the Court of Appeal observed:

> [7] It is well-established as a general rule that 'burden of proof' in a civil case is on the plaintiff but the burden will shift when the plaintiff has adduced sufficient evidence of probative value which requires the defendant to rebut the plaintiff's evidence. ...

(See *Selvaduray v Chinniah* [1939] 1 MLJ 253);

(b) in addition, when the plaintiff materially relies on s 17 of the EA 1950, the court must take cognisance that s 17 is not a conclusive proof provision as stated in s 31 of the Act which read as follows:

> 31 Admissions not conclusive proof but may estop
>
> Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

(c) in addition, in the instant case the deceased had died and in consequence the defendant's version had not been rebutted in any material form. The plaintiff in this case will be in no position to credibly provide sufficient evidence to neutralise the defendant's story. Thus, purely relying on s 17 may not meet the challenge related to conclusive evidence provision;

(d) further, the terms for the return of money stated in the statutory declaration is quite unusual. The debt mention relates to past consideration. The terms of payment is also unusual. In addition, statutory declarations are not generally used as a document to recover a loan granted as it will impinge on the Stamp Act 1949. When a loan is granted and parties want it to be documented, it requires an ad valorem duty to be paid. In the instant case, there was no evidence of payment ad valorem. The Stamp Act 1949 says:

22 BOND, CONVENANT, LOAN, SERVICES, EQUIPMENT LEASE AGREEMENT OR INSTRUMENT of any kind whatsoever:

(1)(a)	being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), for the term of life or any other indefinite period	
	for every RM100 and also for any fractional part of RM100 of the annuity or sum periodically payable	RM1.00
(b)	for any sum or sums of money, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack.	The same ad valorem duty as a charge or mortgage for such total amount.

[9] The general principles related to the statutory declaration in most of the Commonwealth countries are as follows:

(a) it is a statement made under oath but it is not sworn;

(b) it is used to allow a person to declare something to be true for the purposes of satisfying some legal requirement or regulation when no other evidence is available. They are thus similar to affidavits (which are made on oath); and

(c) it may be used for:

(i) declarations of identity, nationality, marital status, etc when documentary evidence is unavailable;

(ii) declaring the intention to change one's name;

(iii) affirming the provenance and nature of goods for export or import; and

(iv) statements of originality for patent applications.

[10] Even though parties have not submitted on the law regarding statutory

declaration as well as the Stamp Act 1949, s 57 of the Evidence Act 1950 requires the court to take cognisance of the law of the country. The judges' oath of office also requires the court to take cognisance of the law of the country to sustain rule of law. Any decision of courts saying otherwise may be per incuriam (see *Reebok (M) Sdn Bhd v CIMB Bank Bhd* [2018] MLJU 1116; *Kenanga Investment Bank Bhd v Swee Joo Bhd & Ors and another appeal* [2017] MLJU 2095; [2017] 1 LNS 2086 and *Ong Koh Hou @ Won Kok Fong v Da Land Sdn Bhd & Ors* [2018] MLJU 778).

[11] We take the view, inter alia, that the statutory declaration to seek repayment of a loan is in breach of general purpose for what statutory declaration are meant for. In addition, if ad valorem duty is not paid, the statutory declaration as admission of loan may not be worth the paper it is written on. We also find that the defendant's defence is one sustainable in law. The failure of the learned judge to give proper weight to the defence version in actual fact compromises the integrity of the decision making process.

[12] For reasons stated above, the appeal is allowed. The decision of the High Court is set aside with costs of RM10,000 for here and below subject to allocatur. Deposit is to be refunded.

We hereby ordered so.

Appeal allowed; decision of High Court set aside with costs of RM10,000 for here and below subject to allocator.

Reported by Dzulqarnain Ab Fatar